

IN THE UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

JACOB D. SHERRILL, JR.,	:	
	:	
Petitioner	:	
	:	
v.	:	CIVIL NO. 4:CV-15-2336
	:	
WARDEN DAVID EBBERT,	:	(Judge Brann)
	:	
Respondent	:	

MEMORANDUM

September 16, 2016

Background

Jacob D. Sherrill, Jr. filed this pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 while confined at the Federal Prison Camp, Lewisburg, Pennsylvania (FPC-Lewisburg). Named as Respondent is FPC-Lewisburg Warden David Ebbert. Service of the petition was previously ordered.

Petitioner indicates that he plead guilty to possession with intent to distribute heroin in the United States District Court for the Northern District of New York. See Doc. 2-1. According to the Petition, Sherrill was sentenced on April 17, 2013 to serve a 48 month term of incarceration with 3 years of supervised release. See Doc. 1, p. 4. Sherrill does not challenge the legality of his

guilty plea or sentence.

Rather, Petitioner states that while serving his federal sentence, at the Federal Prison Camp, Loretto, Pennsylvania the Federal Bureau of Prisons (BOP) determined on March 12, 2015 that Petitioner could not participate in the Residential Drug Abuse Treatment Program (RDAP)¹ and as a result would not be eligible for a one year sentence reduction if he successfully completed the program. The BOP's denial stated "the information you provided during the diagnostic interview about your own substance use in the year prior to your arrest did not meet clinical criteria for a diagnosis of substance abuse disorder." Doc. 2-1, p. 1.

Sherrill generally contends that the BOP's denial of his request for RDAP admission was arbitrary and capricious because his pre-sentence report showed that within a year preceding his federal confinement he had a misdemeanor drug possession charge which resulted in his participation in out patient drug counseling. Petitioner adds that the RDAP denial violated his Fifth Amendment constitutional due process rights. The Petition also maintains that Sherrill's BOP

¹ The RDAP has two components, a five hundred (500) hour classroom program and a transitional services portion which is completed in a halfway house. Upon completion of both segments, the inmate applicant is eligible for a one (1) year sentence reduction.

administrative remedies have been exhausted.

Discussion

Respondent has filed a Suggestion of Mootness.” Doc. 13, p. 1. The notice provides that Petitioner was released from FPC-Lewisburg into Residential Reentry Management in Pittsburgh, Pennsylvania. See id. at p. 2. In light of Sherrill’s release from incarceration, Respondent asserts that his matter is moot since the Petitioner can no longer receive this requested relief, acceptance into an RDAP program.

Habeas corpus review under § 2241 “allows a federal prisoner to challenge the ‘execution’ of his sentence.” Woodall v. Federal Bureau of Prisons, 432 F.3d 235, 241 (3d Cir. 2005). A habeas corpus petition may be brought by a prisoner who seeks to challenge either the fact or duration of his confinement in prison. Preiser v. Rodriguez, 411 U.S. 475 (1973), Telford v. Hepting, 980 F.2d 745, 748 (3d Cir.), cert. denied, 510 U.S. 920 (1993). Federal habeas relief is available only “where the deprivation of rights is such that it necessarily impacts the fact or length of detention.” Leamer v. Fauver, 288 F.3d 532, 540 (3d Cir. 2002).

The case or controversy requirement of Article III, § 2 of the United States Constitution subsists through all stages of federal judicial proceedings. Parties must continue to have a “‘personal stake in the outcome’ of the lawsuit.” Lewis v.

Continental Bank Corp., 494 U.S. 472, 477-78 (1990); Preiser v. Newkirk, 422 U.S. 395, 401 (1975). In other words, throughout the course of the action, the aggrieved party must suffer or be threatened with actual injury caused by the defendant. Lewis, 494 U.S. at 477.

The adjudicatory power of a federal court depends upon "the continuing existence of a live and acute controversy." Steffel v. Thompson, 415 U.S. 452, 459 (1974) (emphasis in original). "The rule in federal cases is that an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed." Id. at n.10 (citations omitted). "Past exposure to illegal conduct is insufficient to sustain a present case or controversy ... if unaccompanied by continuing, present adverse effects." Rosenberg v. Meese, 622 F. Supp. 1451, 1462 (S.D.N.Y. 1985) (citing O'Shea v. Littleton, 414 U.S. 488, 495-96 (1974)); see also Gaeta v. Gerlinski, Civil No.3:CV-02-465, slip op. at p. 2 (M.D. Pa. May 17, 2002) (Vanaskie, C.J.).

According to a copy of Petitioner's BOP inmate locator records, which has been submitted by the Respondent, Petitioner has been released from incarceration and is presently residing in Pittsburgh. See Doc. 13-1.

Since Sherrill has been granted release from federal custody he is no longer eligible for the RDAP and its related one year sentence reduction. As such, under

the principles set forth in Steffel, this matter is subject to dismissal as moot since it no longer presents an existing case or controversy. An appropriate Order will enter.

BY THE COURT:

s/ Matthew W. Brann
Matthew W. Brann
United States District Judge